Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	
	)	

REPLY COMMENTS OF BELLSOUTH

In accordance with the Public Notice, DA 95-1655, released July 26, 1995, BellSouth Telecommunications, Inc. ("BellSouth") hereby replies to the Comments submitted on the plan of non-structural safeguards against cross-subsidy and discrimination ("Plan") filed with the Commission by Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services ("Pacific Bell").

On July 10, 1995, Pacific Bell filed a Plan describing how it will apply the Commission's existing non-structural safeguards to relationships among affiliates engaged in the provision of Personal Communications Services ("PCS"). The Plan was filed in response to a footnote in the PCS Second Report and Order.[1] The footnote occurred in a section of the order describing the issues raised in the Notice of Proposed Rulemaking.[2] After describing several options as

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[1]In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700 (1993) ("PCS Second Report and Order").

[2]See, Id., Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 5676, Erratum, 7 FCC Rcd 5779 (1992).

to the amount of spectrum that local exchange carriers "(LECs") might seek to provide PCS service, the Commission observed:

> Commencement of service by LECs under any of these alternatives would be contingent on the LEC implementing an acceptable plan for non-structural safeguards against discrimination and cross-subsidization.[3]

Nothing in the discussion section or ordering clauses of the PCS Second Report and Order, or any of the rules adopted therein, required the filing of a Plan by Pacific Bell or any other LEC. The only mention of non-structural safeguards in the discussion section of the order occurs in Paragraph 126:

> 126. While we recognize the concerns expressed about LEC participation in PCS, we also find that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks. We believe that these economies will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers. In addition, allowing LECs to provide PCS service should encourage them to develop their wireline architectures to better accommodate all PCS services. We also conclude, based on the record, that the cellular-PCS policies indicated above are adequate to ensure that LECs do not behave in an anticompetitive manner. Thus, no new separate subsidiary requirements are necessary for LECs (including BOCs) that provide PCS. Indeed, by seriously limiting the ability of LECs to take advantage of their potential economies of scope, such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS. In addition, we do not believe that commenters have justified imposing additional cost-accounting rules on LECs

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[3]PCS Second Report and Order, 8 FCC Rcd at 7748, fn. 96.

> that provide PCS service. Therefore, we will generally permit LECs to be eligible for PCS licenses. However, in areas where a LEC has attributable cellular interests (whether or not through a separate subsidiary), it will be eligible only for the PCS frequency blocks available to a cellular operator in its service area (frequency blocks E, F, and G).[4]

Despite the fact that the filing of a Plan by Pacific Bell was entirely gratuitous[5], the Commission issued a Public Notice inviting comment on the Plan. Four competitors of Pacific Bell filed comments.[6] Predictably, each of these parties used their comments to urge the Commission to impose on Pacific Bell, the Bell Operating Companies ("BOCs"), or upon LECs generally, separate subsidiary, accounting, and/or reporting requirements which the commenter had advocated unsuccessfully in rulemaking proceedings.

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[4] Id., 8 FCC Rcd at 7751-52.

[5] Even Pacific Bell misstates the footnote in the PCS Second Report and Order. Pacific Bell states that commencement of PCS service by LECs "is" contingent upon implementing a non-structural safeguards plan. The footnote actually says that commencement of PCS service by a LEC "would be" contingent on implementing a Plan. As BellSouth notes above, the footnote was in a section of the order describing tentative conclusions reached in the prior Notice of Proposed Rulemaking, not the requirements actually imposed by the PCS Second Report and Order. Nothing in the order requires the filing of a Plan, much less its approval by the Commission prior to LEC commencement of PCS service.

[6] Comments were filed by AirTouch Communications, Inc. ("AirTouch"), Cox Enterprises, Inc. ("Cox"); MCI Telecommunications Corporation ("MCI") and Nextel Communications, Inc. ("Nextel").

For example, AirTouch, in a "spirit of fair competition"[7], asks the Commission to impose on BOC PCS operations the separate subsidiary requirement and prohibition on joint marketing applicable to BOC provision of cellular service[8], despite the express finding in the PCS Second Report and Order that "such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS."[9]

In apparent belief that the "weight of the evidence" is measured by the number of pages filed, Cox has attacked virtually every aspect of the Commission's rulemaking orders regarding PCS. Cox challenges everything from the Commission's vision for PCS[10], to its finding that non-

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[7]AirTouch Comments at 2.

[8]AirTouch Comments at 8.

[9]PCS Second Report and Order, 8 FCC Rcd at 7752, para. 126. To the extent that the Commission is concerned about AirTouch's argument that it is unlawful to maintain the cellular separate subsidiary requirement in light of the finding that the public interest would be damaged by imposing such a requirement on BOC provision of PCS, the obvious, and long overdue, solution is to repeal cellular separation requirements contained in 47 C.F.R. §22.903.

[10]Cox views PCS solely as a competitive alternative to wireline telephony, whereas the Commission recognizes that PCS can also complement the wireline network. Compare Cox Comments at 2 ("In Cox's view, PCS's main public policy benefit and legacy rests entirely on its ability to provide a viable alternative to incumbent LEC monopoly networks.") with PCS Second Report and Order at para. 126 ("...allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks. We believe that these economies will promote more rapid deployment of PCS and will yield a broader range of PCS services at lower costs to consumers.")

structural safeguards are sufficient to prevent discrimination and cross-subsidy.[11] Cox questions Pacific Bell's conservative assumption to treat PCS as "unregulated" for federal accounting purposes.[12] Cox characterizes this issue as "currently unresolved"[13], despite the fact that the Commission has provided clear guidance in this regard.[14] Cox's comments fall into three categories: 1) an untimely petition for reconsideration of items already resolved in rulemaking proceedings, 2) a demand for resolution in this proceeding of issues which are pending in current rulemaking proceedings, or 3) a request for new rules that could only be adopted in a future rulemaking proceeding. In all three cases, Cox's requests are untimely and inappropriate in this proceeding. Pacific Bell's only obligation is to comply

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[11]Cox Comments at 4, fn. 6: "...Cox does not share the Commission's confidence in non-structural safeguards and urges reassessment of this determination as part of the required analysis of appropriate safeguards."

[12]Cox Comments at 23 _et_ _seq_.

[13]Cox Comments at 28.

[14]_See_ Pacific Bell Plan at 5 and the authorities cited therein. _See_ _also_, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, _Second Report and Order_, 9 FCC Rcd 1411, 1492 (1994): "In the _Broadband PCS Order_ the Commission decided to impose accounting safeguards, but not structural separation, for PCS providers affiliated with local exchange carriers, including the Bell Operating Companies. . . . For the same reason we will apply to all CMRS providers with local exchange carrier affiliates the same accounting safeguards that were adopted by the Commission in the PCS proceeding."

with the current rules, and Cox has failed to show any lack of compliance with such rules in its extensive comments.

Cox also attacks the Commission's conclusion that price cap regulation greatly reduces the incentive of carriers to engage in cross-subsidy.[15] Cox attaches to its comments a letter by James O. Robbins of Cox to Chairman Hundt, including a paper prepared by Snavely, King & Associates, purporting to show that the present interstate price cap plan does not eliminate incentives for price cap LECs to engage in cross-subsidy. BellSouth has previously shown that the Snavely, King paper is utterly fallacious. Rather than belabor the point, BellSouth attaches hereto a letter from David Markey of BellSouth to Chairman Hundt that refutes Cox's claims. The Commission was correct in concluding that price cap regulation reduces any incentive that carriers have to cross-subsidize. Cox's arguments to the contrary are without merit.

Cox engages in a diatribe about the interconnection arrangements described in the Pacific Bell Plan.[16] BellSouth expresses no opinion about whether Pacific Bell's existing interconnection arrangements meet the needs of PCS providers. However, Section 201(a) of the Communications Act provides a prospective remedy for any party that seeks a new interconnection arrangement not offered by a LEC, and

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[15]Cox Comments at 26 _et seq_.

[16]Cox Comments at 47 _et seq_.

Section 208 provides a remedy for any violation of an existing interconnection obligation. Cox also ignores Pacific Bell's stated willingness to negotiate other types of interconnection desired by PCS providers.[17] Cox's criticism of Pacific Bell's interconnection policy is entirely speculative, and does not justify any change in the existing Commission rules.

Like AirTouch and Cox, MCI assumes incorrectly that prior Commission approval of a nonstructural safeguards plan is a prerequisite to Pacific Bell's commencement of PCS service to its customers.[18] MCI also raises a control issue that would appear to have nothing to do with the Plan. The Commission should reject MCI's call for additional filings by Pacific Bell, followed by additional notice and comment. MCI's comments appear to be interposed solely for purposes of delay, and are without merit in any event.

Nextel, represented by the same law firm that filed Cox's comments, also attacks the adequacy of the existing rules rather than Pacific Bell's compliance with those rules.[19] As such, Nextel's comments on the applicable accounting rules are nothing more than an untimely petition

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[17]See Pacific Bell Plan at 12-13: "Consistent with federal policy, we will comply with requests for other types of interconnection to the extent that the interconnection is economically and technically reasonable."

[18]MCI Comments at 1.

[19]Nextel Comments at 3-4.

for reconsideration. To the extent that Nextel is requesting that the Commission adopt new accounting rules, such rules can only be considered in a rulemaking proceeding, and would have prospective effect only.[20]

In conclusion, Pacific Bell's filing amounts to an affirmation that Pacific Bell will comply with all existing Commission rules in providing PCS service. To the extent that the commenting parties believe that Pacific Bell's implementation of the Commission's rules is inadequate or unlawful, the appropriate means of obtaining redress is through a formal complaint proceeding pursuant to Section 208 of the Communications Act. To the extent that the commenting parties seek to change the ground rules under which LECs and their affiliates are permitted to provide PCS service, such action can only be taken in rulemaking proceedings.

The Commission must bear in mind that LECs and their affiliates have spent literally billions of dollars to secure licenses to provide PCS services based on the existing ground rules. For the Commission now to change those ground rules adversely to the LECs, in the absence of compelling public policy reasons for doing so, would be the height of arbitrary and capricious agency action. The

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[20]See 47 U.S.C. § 220(g).

speculative filings of the commenting parties do not begin to justify such action by the Commission.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
By its Attorney:

M. Robert Sutherland
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
404 529-3854

September 12, 1995

BELLSOUTH

Karen B. Possner
Executive Director
Legislative & Regulatory Policy

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4160
202 463-4196 (fax)
Internet: possner.karen@bsc.bls.com

July 21, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Docket Nos. 87-266 and 94-1

Dear Mr. Caton:

The attached letter from David J. Markey of BellSouth was delivered to the offices of Chairman Hundt, Commissioner Quello, Commissioner Barrett, Commissioner Ness and Commissioner Chong today in connection with the above-referenced proceedings.

Please direct any questions you may have to the undersigned.

Sincerely,

Karen B. Possner cb

Attachment

cc: Chairman Hundt
Commissioner Quello
Commissioner Barrett
Commissioner Ness
Commissioner Chong

BELLSOUTH

David J. Markey
Vice President-
Governmental Affairs

1133 21st Street, N.W.
Suite 900
Washington, D.C. 20036
202 463-4101

July 21, 1995

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: CC Docket No. 87-266
CC Docket No. 94-1

Dear Mr. Chairman:

In a June 28, 1995 letter to you and the other Commissioners, James O. Robbins of Cox Communications, Inc. ("Cox") requests that the Commission substantially revise its cost allocation rules to prevent alleged cross-subsidy of video dialtone service by telephone ratepayers. Cox attached a "white paper" by Snavely, King & Associates, Inc. ("Snavely King") that purports to "debunk" the assertion that price cap regulation of the LECs removes "their incentive to cross subsidize new services from their monopoly rate base."

With all due respect, Cox's letter and the Snavely King paper are based on a factual predicate that is very far fetched, and their analysis exhibits a profound ignorance of the Commission's price cap, jurisdictional separations and cost allocation rules. Furthermore, the "solutions" proposed by Cox are neither necessary nor desirable.

Snavely King begins its analysis from a false premise. It asserts, without citing any factual support, that LEC video dialtone systems are not profitable, under recover common video/telephony costs and corporate overheads, and thus are heavily cross-subsidized by telephony services. The Commission has made it clear that through its tariff review process it will require that video dialtone systems recover their direct costs, a reasonable share of common costs, and a contribution to corporate overheads. Any service that meets this test more than satisfies economic criteria for prices that are free of cross-subsidy.

Snavely King next argues that federal price cap regulation is insufficient to protect telephony customers from cross-subsidy due to the jurisdictional separations process.

Section 410 of the Communications Act requires the jurisdictional separation of "common carrier property and expenses." Both traditional telephony and video dialtone are regulated common carrier communications offerings, and thus the costs associated with both must be jurisdictionally separated. Although the Commission initially held that video dialtone costs would be directly assigned to the interstate jurisdiction, it later held, correctly, that the video dialtone platform can be used for both interstate and intrastate services, and thus that the costs should be separated. State regulation is responsible for protecting intrastate telephone customers against cross-subsidy.

Cox argues that state regulators will be unable to protect intrastate ratepayers because "many state regulators face changes in state laws which, under reform of state price caps, forbid the collection of cost and revenue data needed to address the local VDT cross-subsidy issues." If Cox is pointing to changes in state laws such as those recently enacted in Georgia and Florida, the concern expressed is without merit. If states adopt pure price regulation, as have Tennessee, Florida, Georgia and North Carolina within the BellSouth region, any shift in costs from the interstate to the intrastate jurisdiction would have no impact on state ratepayers. With pure price regulation in both the interstate and intrastate jurisdictions, jurisdictional cost shifts become meaningless to consumers. Even in states that have adopted forms of incentive regulation other than pure price regulation, such as Alabama, Mississippi, Kentucky, Louisiana and South Carolina, the incentive to cross-subsidize video dialtone from conventional telephony is greatly reduced.

Cox and Snavely King propose to resolve their contrived jurisdictional separations issue by amending the Commission's Part 64 rules "to separate all video dialtone costs from telephone costs before these costs are separated by jurisdiction." This request is wholly inappropriate. The Part 64 rules are designed to separate the cost of regulated carrier operations from the cost of nonregulated operations. Since both video dialtone and traditional telephony are regulated common carrier communications services, it would be a misapplication of the principles behind the Part 64 rules to use those rules to isolate video dialtone costs. In addition, the Part 36 rules separate costs by plant category, not by services. The separations rules do not preclude state regulators from identifying video dialtone costs and ensuring that intrastate telephone customers are not burdened. As noted above, if state regulators adopt pure price regulation, the separation of costs between jurisdictions becomes largely irrelevant to the prices charged to customers.

Snavely King argues that because of the "early unprofitability" of video dialtone, price cap LECs "will choose the lowest productivity offset available, unless this choice will cause it to lower rates more through sharing than it avoids by choosing a low productivity offset." Snavely King obviously does not understand the LEC price cap plan. The current LEC price cap plan was designed with strong financial incentives to select the <u>highest</u> productivity offset that a carrier reasonably believes it can achieve. To the extent that Cox and Snavely King observe that the sharing mechanism can dampen incentives to increase productivity, they merely state the obvious. BellSouth agrees that the elimination of the sharing mechanism would give carriers an unambiguous incentive to improve productivity, and hence profitability.

Snavely King next offers a hypothetical case in which a price cap carrier deploys video dialtone in a way that drives the carrier's interstate earnings from 13.65 percent to 11.10 percent in three years. There are no data offered to support this hypothesis for obvious reasons. No carrier management would embark on a course of conduct that would so adversely affect shareholder value. If a carrier perceived that the deployment of video dialtone would have such an adverse impact on shareowners, it would decline to deploy video dialtone.

Cox also states that the Commission should "determine a reasonable allocation of common costs that must be applied in all VDT tariffs." Any arbitrary allocation of such costs results in economic inefficiency and reduces consumer welfare. Cox has offered no justification for the Commission to deviate from sound economics in regulating LEC provision of video dialtone services. Adopting Cox's recommendation would simply handicap the telephone companies' ability to offer efficient prices when competing with incumbent cable operators like Cox. While such a rule would afford a distinct competitive advantage to the incumbent cable operator, that advantage would come at the expense of the public interest.

In conclusion, Cox and Snavely King seem to have a profound misunderstanding of common carrier principles. Therefore, their recommendations are inappropriate and unnecessary.

Sincerely,

cc: The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable James H. Quello
The Honorable Susan Ness

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of September, 1995, serviced all parties to this action with the foregoing REPLY COMMENTS reference to GEN Docket 90-314, by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.

Julia W. Spires

SERVICE LIST GEN DKT. 90-314

James P. Tuthill
Betsy Stover Granger
Attorneys for
Pacific Bell
140 New Montgomery Street, Rm. 1525
San Francisco, CA 94105

James L. Wurtz
Margaret E. Garber
Attorneys for
Pacific Telesis Group - Washington
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Rita McDonald
FCC, Wireless
Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 5202
Washington, D.C. 20554

International Transcription Service
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

David A. Gross
Kathleen Q. Abernathy
Attorneys for
AirTouch Communications, Inc.
1818 N Street, N.W., Suite 800
Washington, D.C. 20036

Brian Kidney
Richard Nelson
Attorneys for
AirTouch Communications, Inc.
One California Street
San Francisco, CA 94111

Werner K. Hartenberger
Laura H. Phillips
Peter A. Batacan
Christine H. Burrow
Dow, Lohnes & Albertson
Attorneys for
Cox Enterprises, Inc.
1255 - 23rd St., N.W., Suite 500
Washington, D.C. 20037

Larry A. Blosser
Donald J. Elardo
Attorneys for
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Leonard J. Kennedy
Christina H. Burrow
Dow, Lohnes & Albertson
Attorneys for
Nextel Communications, Inc.
1255 - 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554